

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing/ VC Mode (Hybrid))*

**C.P. (CAA) No.04/BB/2023**  
U/ss. 230 to 232 r/w Section 66 and other applicable  
provisions of the Companies Act, 2013 R/w the  
Companies (Compromises, Arrangements and  
Amalgamations) Rules, 2016

**IN THE MATTER OF**

**Suryoday One Energy Private Limited**

#1, 2<sup>nd</sup> Floor, 12<sup>th</sup> Cross, Ideal Homes,  
Near Jayanna Circle, Rajarajeshwari Nagar,  
Bangalore – 560 098. ... Petitioner Company No.1/ Transferor Company

**Gokak Textiles Limited**

#1, 2<sup>nd</sup> Floor, 12<sup>th</sup> Cross, Ideal Homes,  
Near Jayanna Circle, Rajarajeshwari Nagar,  
Bangalore – 560 098. ... Petitioner Company No. 2 / Transferee Company

**Order delivered on: 24.04.2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Petitioners : Shri Saji. P. John  
For the ROC : Shri Vaihav  
For the Income Tax Dept. : Shri Ganesh R. Ghale

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a Second Motion Petition filed by Suryoday One Energy Private Limited (for brevity, the "Petitioner Company No.1 / Transferor Company") & Gokak Textiles Limited (for brevity, the "Petitioner Company No.2/ Transferee Company No.2") on 04.01.2023 under Sections 230 to 232 R/w Section 66 and other applicable provisions of the Companies Act, 2013

(hereinafter referred to as the said Act) R/w Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, *inter alia*, seeking for the sanction of the Composite Scheme of Arrangement of Suryoday One Energy Private Limited (Petitioner Company No.1) with Gokak Textiles Limited (Petitioner Company No.2) and their respective Shareholders.

2. The Petitioner Companies filed First Motion Application under section 230-232 of the said Act, 2013 bearing C.A. (CAA) No.40/BB/2022 before this Tribunal. This Tribunal vide order dated 10.10.2022 dispensed with the meetings of the Equity Shareholders & Unsecured Creditors of the Transferor Company, Preference Shareholders & Unsecured Creditors of the Transferee Company and convened the meetings of Secured Creditors of the Transferor Company & Equity Shareholders of the Transferee Company. Since there were no Secured Creditor in the Transferee Company, there was nothing to convene the meeting.
3. When the petition was listed on 06.02.2023, through Physical Hearing, the following directions were issued:

*“The Petition be listed for hearing on **11.04.2023**. At least ten days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz., ‘Business Standard’ English Daily and translation thereof in ‘Kannada Prabha’ Kannada Daily, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

*Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the Objector(s).*

*In addition to the above public notice, the Petitioner Companies shall serve the Notice of the Petition on the following Authorities,*

namely, (a) The Regional Director (South East Region), Hyderabad (b) The Registrar of Companies Karnataka, Bengaluru (c) Commissioner of Income Tax, Ward 3(3)(3), Bengaluru in respect of First Petitioner Company (PAN-AAAYCS1295A) and the Assessing Officer, Circle 3(1)(1), Bengaluru in respect of Second Petitioner Company (PAN-AACCG8244P) (d) The Official Liquidator, Bengaluru (g) The General Manager, Listing Department, Bombay Stock Exchange of India, Mumbai (h) Securities and Exchange Board of India, Mumbai, along with the copy of this Petition and the Annexures filed therewith by Speed Post immediately and to such other Sectoral Regulator(s) who may govern the working of the Petitioner Companies involved in the Scheme as per Rule 8 of the Companies (CAA) Rules, 2016, with a direction that they may submit their representation, if any, within thirty days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme.

*The Petitioner Companies shall host Notice of final hearing along with the copy of the Scheme on its website, if any.*

*The Petitioner Companies shall at least seven days before the date of hearing of the Petition file an Affidavit of Service regarding paper publication as well as service of notices on the Authorities specified above including the Sectoral Regulator as well as the Objector(s), if any. The Petitioner Companies shall file compliance report with this Tribunal at least ten days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities & publication of advertisement of the notice of hearing in the newspapers have been duly complied with.”*

4. In pursuant to the aforesaid direction, the authorized signatory of the Petitioner Companies has filed proof of service of notice vide diary No.1709 dated 27.03.2023 along with original copies of newspaper publication in “Business Standard” (English), and “Kannada Prabha” (Kannada). Further, in another Affidavit filed by the Authorized Signatory of the Petitioner Companies, vide diary no.4997 dated 27.09.2023, wherein it is stated that the Petitioner Companies have not received any objections from any persons/stakeholders/creditors as on the date of this Affidavit.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of

employees have been discussed in detail in first motion order dated 10.10.2022.

6. The Board Resolution of the Petitioners Company approving the Scheme is annexed as Annexure-F to the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company, confirming that the accounting treatment contained in the Scheme is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder and all the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013. The aforesaid certificate is attached as Annexure-N to the Petition.
8. The Audited Financial Statement as on 31.03.2022 of the Petitioner Companies and the Unaudited Financial Statements as on 30.09.2022 of the Petitioner Companies are attached Annexure- C, C1, E1 & E2 to the Petition. As per the Scheme, the “Appointed Date” means 01<sup>st</sup> day of April, 2022.
9. The Valuation Report for Arrangement of the Transferor Company with the Transferee Company is attached as Annexure – G to the Petition.
10. In pursuant to the direction dated 06.02.2023, the Regional Director and the Registrar of Companies have filed their Common report vide Dairy No.4838 dated 18.09.2023 by *inter alia* observing as under, vide para 2:
  - I. This is a Composite Scheme of Arrangement consisting of two parts i.e.
    - a. Reduction of Share Capital and Re-organization of reserves of Gokak Textiles Ltd.
    - b. Amalgamation by way of absorption of Suryoday One Energy Pvt. Ltd. (Transferor Company) with Gokak Textiles Ltd. (Transferee Company).
  - II. The Transferee Company is a listed company and has to obtain No Objection Certificate from SEBI and the concerned stock exchanges

on which its shares are listed after complying with applicable, regulations, before the Scheme is allowed.

- III. As per the latest shareholders list attached to the last Annual Return filed by both the Transferor and Transferee Companies as on 31.03.2022, Shapoorji Pallonji Infrastructure Capital Company Private Limited and Shapoorji Pallonji and Company Private Limited hold 99.99% and 73.56% of equity shares of Transferor and Transferee respectively.
- IV. The Transferor Company has shifted its Registered Office from the State of Maharashtra, Mumbai to the State of Karnataka, Bangalore on 12.11.2021.
- V. As per Para 3.2 of Part-B of the proposed Scheme the appointed date has been stated as 01.04.2021. It is stated that both the Companies have already filed its latest Balance Sheets as at 31.03.2022. In view of the above the Tribunal may be pleased to direct the Petitioner Companies to change the appointed date from 01.04.2021 to 01.04.2022 and accordingly amend the Scheme changing the appointed date. Since the Petitioner Companies have filed their latest due Financial Statements up to Financial Year ended on 31.03.2023.
- VI. As per para 6.1 of Part-C of the proposed scheme, it has been *inter alia* stated that "upon the Scheme becoming effective, 17,50,00,000 preference shares of face value of Rs.10/- issued by Transferee Company to Shapoorji Pallonji and Company Private Limited shall be extinguished and cancelled through capital reduction. The consideration for such capital reduction shall be discharged as per Clause 6.2. Further, the borrowings of the Transferee Company, including outstanding interest, received from Shapoorji Pallonji and Company Private Limited shall be written back by the Transferee Company except to the extent of Rs.50 Crore and the obligation of the Transferee Company to discharge any dues representing the outstanding amounts in relation to the said borrowings shall stand discharged and extinguished except to the extent of Rs.50 Crore.

The Transferee Company shall, in lieu of cancellation of preference shares and write back of borrowings issue 23,58,10,000 7% Cumulative Debentures of face value of Rs.10 each to Shapoorji Pallonji and Company Private Limited. The Cumulative Debentures shall be issued as per terms and conditions as set out in Annexure-1 attached to the proposed scheme.

It is seen from the terms and conditions of the debentures to be issued as provided for in Annexure-I to the scheme that these are unsecured debentures which are being issued for perpetuity. Further, they have been ranked senior only to equity shares and subordinate to all other debts, with the terms of the repayment which have been left to the discretion of the Transferee Company i.e. the borrower. In addition to this, the accounting treatment for this reorganization stated in clause 7 of the scheme relies upon Ind AS 109 which deals with a debtor and creditor renegotiating the terms of a financial liability with the result that the debtor extinguishes the liability fully or partially by issuing equity instruments to the creditor. In this case, debentures are being issued by the debtor which are usually of the nature of debt instruments, but their characteristics stated in Annexure-I depict otherwise.

In view of the above, the Tribunal may be pleased to direct the Transferee Company to furnish the exact nature of the instruments being issued by the debtor and the applicability of the Ind AS 109 is to be provided along with the proposed placement of these instruments on the face of the Balance Sheet of the company with supportive documents, duly certified, before the scheme is allowed.

- VII. In this case, preference shareholders are being issued debentures to meet their consideration. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to clarify whether any dividend is due to the preference shareholders and also to clarify as to whether rights of these shareholders as per their offer document including redemption, assured dividend etc. are being varied. In such a case,

compliance of section 48 of the Companies Act, 2013 is to be ensured. The said details may be furnished duly certified, before the scheme is allowed.

- VIII. As per clause 12 of part D of the Scheme, in consideration of amalgamation of the Transferor Company and Transferee Company, the Transferee Company shall issue and allot 1216 fully paid-up 11% Redeemable Non-Convertible Cumulative Non-Participating Preference Shares of Rs.10/- each for every 1000 equity shares held in Transferor Company. The Tribunal may be pleased to direct the Transferee Company to alter the authorized capital structure suitably to enable itself to issue preference share as per the consideration provided in the scheme.
- IX. The main object of the Transferor Company is design, engineer, build, construct, upgrade, improve, strengthen, renovate, develop etc. in the field of power generation, whereas the main object of the Transferee Company is spinners, weavers, manufacturers, ginner, pressers, packers, processors etc. in the field of Textiles. The objects of the Transferee Company needs to be altered suitably to enable it to carry on all the existing objects of the Transferor Company post amalgamation by complying with the applicable provisions of the Companies Act, 2013 and filing relevant e-forms.
- X. The BSE has sent a letter dated 16.12.2022 to NCLT, with a copy marked to this office and to the Registrar of Companies, wherein it has been stated that the Petitioner Companies need to comply with the requirements prescribed by SEBI/Exchange. A copy of the letter is attached in Annexure -A. The Petitioner Companies are required to provide a specific NOC from BSE in this instance before the scheme is allowed.
- XI. As per MCA records, the Transferor Company has one open charge. Hence, the company has to obtain and furnish. No Objection Certificate from the concerned charge holder before the scheme is allowed and the scheme may be suitably modified to accommodate the charge created against the assets of the company.

- XII. Both the Petitioner Companies are loss-making entities. There may be a negative outflow of the tax liability of the Transferee Company once the Scheme is approved. The Tribunal may be pleased to direct the Transferee Company to furnish proper justification, with supporting documents, if any.
- XIII. As per Independent Auditor's Report for the Financial Year ended 31.03.2022, the Transferee Company has disputed Karnataka Special Tax on Entry of Certain Goods to the tune of Rs. 1.14 Crore, Duty of excise to the tune of Rs. 1.43 Crore and Income Tax liability to the tune of Rs.3.99 Lakh. The Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the NCLT to the effect that they will settle the disputed dues as and when the claims are crystalized.
- XIV. As per note nos. 17 and 20 of the Audited Financial Statement for the year ended 31.03.2022, the Transferor and Transferee Companies have undisputed statutory dues to the tune of Rs. 1.34 Crore and Rs.67.28 Lakh respectively. The Petitioner Companies may be directed to furnish an undertaking to the NCLT to the effect that they will settle the statutory dues immediately, if not settled so far.
- XV. According to note 15 and 21 of the Audited Financial Statement for the year ending 31.03.2022, the Transferor Company has outstanding dues payable to Micro, Small and Medium Enterprises to the tune of Rs. 15.18 Lakh and Rs.84,000 respectively. The Petitioner Companies may be asked to show as to how they have complied with Micro, Small and Medium Enterprises Development Act and may be directed to settle the dues as per the said Act.
- XVI. Clause 14 of Part D of the Scheme provides for Clubbing of Authorised Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. The Tribunal may be pleased to direct



the Transferee Company to comply with provisions of the aforementioned section and pay the difference fee, after setting off the fee already paid by the Transferor Company on its respective capital.

- XVII. As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default, of the Transferor Companies prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
- XVIII. As per Company Master Data of the Transferee Company as at 31.03.2022, it is observed that the paid up share capital of the company is Rs.1,81,49,93,080/- (i.e. more than 100 crores). As per Section 149(1) of the Companies Act read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules 2014, provides that a Public Company having a paid up share capital of Rs.100 Crore or more should at least have one woman Director on its board. The Tribunal may be pleased to direct the Transferee Company to furnish the Compliance of Section 149 of the Companies Act, 2013, if not complied, till date, Transferee Company may be directed to file a Compounding/Adjudication Application before the Registrar of Companies, before the Scheme is allowed.
- XIX. As per Company Master Data of the Transferee Company as at 31.03.2022, it is observed that the paid-up share capital of the company is Rs.1,81,49,93,080/- (i.e. more than 100 crores). As per Section 149(1) of the Companies Act read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules 2014, provides that a Public Company having a paid-up share capital of Rs.100 Crore or more should have independent Directors on its board. The Tribunal may be pleased to direct the Transferee Company to furnish the Compliance of Section 149 of the Companies Act, 2013, if not complied, till date, Transferee Company may be directed to file a Compounding/Adjudication Application before the Registrar of Companies, before the Scheme is allowed.

- XX. With reference to the Directorate's letter dated 17.03.2023 issued to the Income Tax Department, till date no report/comments in the matter have been received from Income Tax Department. The Tribunal may be pleased to direct the Directors of the Petitioner Transferee Company to furnish an undertaking that in future any dues if any arise from the Income Tax Department against the Transferor Company and Transferee Company, Transferee Company is ready to pay the said dues as and when the demand arises from the Income Tax Department.
- XXI. Report of Official Liquidator, Karnataka dated 10.08.2023 filed before the Tribunal and copy of the same has been furnished to this Directorate vide e-mail dated 11.08.2023 (copy enclosed) with respect to CP(CAA)04/BB/2023 in CA(CAA)No.40/BB/2022. Official Liquidator in his report has pointed out certain observations. The Tribunal may be pleased to direct the Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.
- XXII. Para 13.5 of Part-B of the Scheme under Accounting Treatment it is stated as under:
- "The excess/deficit of the value of the assets over the value of liabilities of the Transferor Company, pursuant to amalgamation of the Transferor Company with and into the Transferee Company, and as recorded in the books of accounts of the Transferee Company shall, after adjusting as above, be recorded as 'Capital reserve' in the books of the Transferee Company".*
- The above para of the scheme is not correct since the said para is silent about shares allotted by the Transferee Company to the shareholders of the Transferor Company towards purchase consideration which shall be considered along with the liabilities acquired to record Capital Reserve in the books of the Transferee Company on post-merger Accounting Treatment.

XXIII. There are no Prosecutions, Complaints, Technical Scrutiny/Inquiry and Inspections pending in this office against the Petitioner Companies.

11. The reply to the common report of ROC & RD has been filed by the Petitioner Companies vide diary No.4998 dated 27.09.2023 *inter alia* stating as under:-

- I. **Reply to Point 2(I) of the Common report of the ROC & RD:** it is submitted that it is a matter of fact and is not required to be traversed.
- II. **Reply to Point 2(II) of the Common report of the ROC & RD:** it is submitted that Petitioner Company No. 2 has received Observation letter from BSE Ltd on February 21, 2022 which was attached as 'Exhibit O' to the Main Company Scheme Petition.
- III. **Reply to Point 2(III) of the Common report of the ROC & RD:** it is submitted that it is a matter of fact and is not required to be traversed.
- IV. **Reply to Point 2(IV) of the Common report of the ROC & RD:** it is submitted that it is a matter of fact and is not required to be traversed.
- V. **Reply to Point 2(V) of the Common report of the ROC & RD:** it is submitted that Petitioner Companies hereby undertakes to change the appointed date from April 1, 2021 to April 1, 2022. Attached herewith as Annexure-A to this affidavit is the revised Scheme with change in appointed date. As the similar query was raised by the Official Liquidator, the Petitioner Companies had filed an affidavit dated August 30, 2023 along with revised Scheme on September 1, 2023.
- VI. **Reply to Point 2(VI) of the Common report of the ROC & RD:** the Petitioner Companies submits the following:
  - a. **Nature of Instrument and Applicability of IND AS 109:**  
Redeemable Preference Shares is a "financial liability" under IndAS 109; Appendix D to IndAS 109 specifically provides that whenever there is an extinguishment of a financial

liability, that should be debited, and any new instrument issued in consideration for such extinguishment shall be freshly recorded at the fair market value, and the difference, if any between the extinguishment and the fair market value of new instruments will be taken to P&L.

**b. Perpetual debt to be Treated as Qausi Equity (Exact Nature of the Instrument issued):**

IndAS 32 defines financial liability as any liability that is a contractual obligation to deliver cash or another financial asset to another entity. In Perpetual Debenture, since there is no contractual obligation to deliver cash, it is not a liability. An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Hence consideration issued to preference shareholders upon cancellation is a quasi-equity and shown under the heading “Equity” in the Balance Sheet.

- VII. **Reply to Point 2(VII) of the Common report of the ROC & RD:** it is submitted that no dividend is due to the preference shareholders and further consent of the preference shareholders through consent affidavit was submitted at time of filing of Application and therefore Petitioner Company No.2 was in compliance with Section 48 of the Companies Act, 2013.
- VIII. **Reply to Point 2(VIII) of the Common report of the ROC & RD:** it is submitted that para 12.5 and 12.7, provides for alteration authorized capital structure suitably to enable Petitioner Company No. 2 to issue preference share as per the consideration provided in the Scheme. Hence no separate approval required.
- IX. **Reply to Point 2(IX) of the Common report of the ROC & RD:** it is submitted that the upon effectiveness of the Scheme the Petitioner Company No.2 hereby undertakes to change its object clause to enable the Petitioner Company No.2 to carry on existing objects of the Petitioner Company No.1.

- X. **Reply to Point 2(X) of the Common report of the ROC & RD:** it is submitted that the meeting of equity shareholders was initially scheduled for December 14, 2022. However, the meeting had to be adjourned, and the new date for the meeting was set for December 26, 2022. The Petitioner Company No.2 has complied with directions given by SEBI/Exchange of sending the abridge prospectus along with the notice of adjourned meeting. Copy of adjourned meeting notice was attached as Exhibit-J2 to the main Company Scheme Petition.
- XI. **Reply to Point 2(XI) of the Common report of the ROC & RD:** it is submitted that this Tribunal had directed to convene the meeting of Secured Creditor of Transferor Company on December 14, 2022 and the sole Secured Creditor attended the meeting and had consented to the Scheme. Copy of the Chairman's Report in this regard is available at Annexure-J1 of the Company Petition.
- XII. **Reply to Point 2(XII) of the Common report of the ROC & RD:** it is submitted that the Companies Act, 2013 does not restrict the merger of loss making entity and it is a commercial decision taken by the Board of Directors of the Petitioner Companies. The commercial wisdom of the Board will prevail unless circumstances warrant. In the instant case, there exists no such circumstances.
- XIII. **Reply to Point 2(XIII) of the Common report of the ROC & RD:** it is submitted that since Petitioner Company No. 2 is a surviving entity and the dues are under contingencies and proceedings are going-on with concerned authorities and shall be settled/paid in ordinary course of business.
- XIV. **Reply to Point 2(XIV) of the Common report of the ROC & RD:** the Petitioner Company No.1 & 2 hereby states that the Petitioner Companies have paid all its undisputed statutory dues and as on date of filing of this affidavit there is no undisputed statutory dues pending.
- XV. **Reply to Point 2(XV) of the Common report of the ROC & RD:** it is submitted that as per the Scheme, all the liabilities of Petitioner

Company No.1 shall be transferred to Petitioner Company No.2. Further, the Petitioner Company No.1 has paid Rs. 4.08 Lakh out of the outstanding dues towards MSME Registered Vendors as on March 31, 2022 and the balance will be transferred to the Petitioner Company No.2. Accordingly, all the outstanding dues including MSME dues shall be transferred to the Petitioner Company No.2 and the Petitioner Company No.2 undertakes to pay the same in the ordinary course of its business pursuant to sanction of the Scheme by this Tribunal.

**XVI. Reply to Point 2(XVI) of the Common report of the ROC & RD:**

The Petitioner Company No.2 hereby undertakes to comply with the provision of Section 232 (3)(i) of the Companies Act, 2013 and agrees to pay the difference fee, after setting off the fee already paid by the Petitioner Company No.2 on its capital.

**XVII. Reply to Point 2(XVII) of the Common report of the ROC & RD:**

The Petitioner Company No.2 hereby undertakes that the liability in respect of offences committed under the Companies Act by the Officers in default, of the Petitioner Company No.1 prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

**XVIII. Reply to Point 2(XVIII & XIX) of the Common report of the ROC & RD:**

The Petitioner Company No. 2 hereby states that they are in compliance in with the provisions of Section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules 2014 with respect to appointment of Woman Director and Independent Directors.

**XIX. Reply to Point 2(XX) of the Common report of the ROC & RD:**

The Petitioner Company No.2 hereby undertakes that in future if any dues arise from the Income Tax Department against the Petitioner Company No.1 and Petitioner Company No.2, the Petitioner Company No.2 is ready to pay the said dues as and when the demand arises from the Income Tax Department

- XX. **Reply to Point 2(XXI) of the Common report of the ROC & RD:** it is submitted that Petitioner Company No.1 & 2 have filed their response to the Report of Official Liquidator, Karnataka vide affidavit dated August 30, 2023 on September 1, 2023.
- XXI. **Reply to Point 2(XXII) of the Common report of the ROC & RD:** it is submitted that Petitioner Companies hereby undertakes to comply with the direction as mentioned in Para No.2(XXII).
- XXII. **Reply to Point III of the Common report of the ROC & RD:** it is submitted that it is a matter of fact and is not required to be traversed.
12. The Official Liquidator has filed its report vide Diary No.4212 dated 11.08.2023 by *inter alia* observing as under:
- I. Transferor Company and Transferee Company are registered in the state of Karnataka and Transferor Company is an Unlisted private limited Company and Transferee Company is Public Listed Company.
  - II. The appointed date proposed is 01.04.2021. Being an old and outdated, the scheme may be allowed from 01.04.2023 or any other alternative date deem fit. It may be noted that the Transferor Company have filed the Balance sheets as at 31.03.2022.
  - III. Transferor Company have authorized and paid-up capital of Rs. 40,00,00,000/- and 35,00,00,000/- respectively.
  - IV. That the consideration fixed for merger is given below  
"1216 fully paid up 11% Redeemable Non-Convertible Cumulative Non-Participating Preference Shares of Rs.10 each of Transferee Company would be issued for every 1000 equity shares held in Transferee Company in proportionate to this shareholding in the Transferor Company". The Shareholders of Transferor Company will not be getting equity share in Transferee Company and may not have voting rights on many company matters.
  - V. 99% shares (3,49,97,399) of Transferor Company is held by Shapoorji Pallonji Infrastructure Capital Company Private Limited

and remaining 2600 shares by Gokak Power & Energy Limited. Hence, the Transferor Company is almost a 100% subsidiary of another entity. The Petitioner needs to explain why the subsidiary company is not merging with its own holding company instead, of merging with an entirely different entity to the satisfaction of the NCLT.

- VI. The Board of Transferor Company have approved the scheme on 12.11.2021 and the NCLT vide order dated 02.03.2022 has dispensed with the meeting of shareholders of Transferor Company after producing consent from the shareholders.
- VII. The Transferor Company has one secured creditor as on appointed date and as per charge register maintained by ROC. As per the information provided, secured creditor has given its consent to the scheme.
- VIII. The total unsecured creditors as on 31.12.2021 of Transferor Company was Rs.130.52 Crore consisting of 20 Unsecured Creditors. However, it was noticed that NCLT vide order dated 02.03.2022 has dispensed with the meeting of unsecured creditors of Transferor Company considering the NOC/ Consent given by them. However, on examination of the scheme documents, It was noticed that NOC has been received from unsecured creditors (94.34%) constituting an amount of Rs.125,74,66,239/-. They are nothing but holding company of Transferor Company namely Shapoorji Pallonji Infrastructure Capital Company Private Limited and Shapoorji Solar Holdings Private Limited. No consent has been obtained from the remaining unsecured creditors, who may be interested in the scheme proposed.
- IX. Transferor Company is having total MSME creditors to the tune of Rs. 15.18 Lakh as on 31.03.2022. Same are pending for more than one year. In this regard, the Petitioner needs to settle the said MSME dues as per the MSME Act, and separate undertaking to that effect may be furnished.



- X. As per section 203 of the Companies Act, 2013 Transferor Company needs to appoint a full time Company Secretary. However, it is noticed that the company has failed to appoint a whole time Company Secretary from 08.03.2018 to 30.06.2021. Needs to file adjudication application to the ROC.
- XI. The Transferor Company has related party transactions, Compliance of section 188 of the Companies Act, 2013 needs to be shown.
13. The reply to the report of Official Liquidator has been filed by the Petitioner Companies vide diary No.4587 dated 04.09.2023 *inter alia* stating as under:-
- I. **Reply to Para No.I of the report of the Official Liquidator:** it is submitted that it is a matter on record and is not required to be traversed.
  - II. **Reply to Para No.II of the report of the Official Liquidator:** The Petitioner Companies hereby undertakes to change the appointed date from April 1, 2021 to April 1, 2022. Attached herewith as Annexure-A to this Affidavit is the revised Scheme with change made in appointed date only.
  - III. **Reply to Para No.III of the report of the Official Liquidator:** it is submitted that that it is a matter on record and is not required to be traversed.
  - IV. **Reply to Para No.IV of the report of the Official Liquidator:** it is submitted that the Shareholders of Transferor Company have consented to the merger by way of Consent Affidavits and they are well aware of the Share Exchange Ratio pursuant to the sanction of Scheme. The Consent Affidavits are available at Annexure-K of the First motion Application.
  - V. **Reply to Para No.V of the report of the Official Liquidator:** it is submitted that the Rationale of the merger is provided in the Scheme itself. Gokak Textiles Limited (Transferee Company) would be able to consolidate the ownership of the power business and also provide reliable source of power for its textile division, which is one

of the Rationale. There is no specific requirement or condition under the Companies Act, 2013 that Transferor Company must be merged with the Holding Company only. Parent Company and its subsidiary/ies are separate legal entities and the decision to merge subsidiary with Parent Company is a commercial decision taken by the Board of Directors of the Transferee and Transferor Companies, respectively in the best interest of the stakeholders of the Transferee and Transferor Companies. The commercial wisdom of the Board will prevail unless circumstances warrant. In the instant case, there exists no case such circumstances.

- VI. **Reply to Para No.VI of the report of the Official Liquidator:** it is submitted that it is a matter on record and is not required to be traversed.
- VII. **Reply to Para No.VII of the report of the Official Liquidator:** it is submitted that this Tribunal directed to convene the meeting of Secured Creditor of Transferor Company and the sole Secured Creditor attended the meeting and has consented to the Scheme. Copy of the Chairman's Report in this regard is available at Annexure-J1 of the Company Petition.
- VIII. **Reply to Para No.VIII of the report of the Official Liquidator:** it is submitted that sub-Section 9 of Section 230 of the Companies Act, 2013 states that, "*The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety at least ninety per cent Value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement*" accordingly, the Consent was obtained from 94.34% of the value of Unsecured Creditors.
- IX. **Reply to Para No.IX of the report of the Official Liquidator:** it is submitted that as per the Scheme, all the liabilities of Transferor Company shall be transferred to Transferee Company. Transferor Company has paid Rs.4.08 Lakh, out of outstanding dues of Rs.15.18 Lakh towards MSME Registered Vendors as on March 31, 2022 and balance is on account of provision of interest due, to the

MSME Registered Vendors which will be transferred to the Transferee Company. Accordingly, all the outstanding dues including MSME dues shall be transferred to the Transferee Company and the Transferee Company undertakes to pay the same in the ordinary course of its business. Further the Transferee Company undertakes to settle the dues of MSME Creditors as per MSME Act in its ordinary course of business pursuant to sanction of the Scheme by this Tribunal.

- X. **Reply to Para No.X of the report of the Official Liquidator:** it is submitted that initially there was no requirement of appointment of Company Secretary as the paid up share capital of the Transferor Company as on March 31,2018 was Rs. 1,00,000/- (Rupees One Lakh only). Thereafter, on April 16, 2018 loan of Rs. 34,99,00,000 ( Rupees Thirty Four Crore Ninety- Nine Lakh only) was converted into equity shares of the Company, of Rs. 10/- (Rupees 10 only) result of which paid up share capital of the Company was increased to Rs.35,00,00,000/- (Rupees Thirty-Five Crore only). The requirement for appointment of a Company Secretary was triggered upon conversion of the aforesaid loan into equity and the Transferor Company had appointed Mr. Mandar Karnik on August 13, 2018. The Transferor Company appointed the Company Secretary well within the time frame work as prescribed under the Companies Act, 2013. Further, Mr. Mandra Karnik resigned from the position of the Company Secretary on December 12, 2019 and as per the Companies Act, 2013 the Transferor Company needs to fill the office of Company Secretary within 6 months from the date of resignation. As such the Transferor Company was searching for suitable candidate, however, due to global pandemic situation arise since March 2020 and lockdown scenario, the Transferor Company could finalize the candidate and resultantly appointed Ms. Nirali Mehta as the Company Secretary of the Transferor Company on July 1, 2021. The Transferor Company undertakes to file adjudication application under Section 441 of Companies Act, 2013 before effectiveness of

the Scheme. Hence, this non-compliance shall not deter the Scheme.

- XI. **Reply to Para No.XI of the report of the Official Liquidator:** it is submitted that the all contracts/arrangements/transactions under Section 188 of the Companies Act, 2013 entered by the Transferor with related parties are in the ordinary course of business and on an arm's length basis. Related Party Transactions are in compliance with the provisions of Section 188 of the Companies Act, 2013. Details of the Related Party Transactions of Transferor Company, reflected/disclosed in the Notes to Financial Statements is part of the Company petition at Annexure-C2. Further, the Transferor Company undertakes that Related Party Transactions are in compliance with Section 188 of the Act.
14. The Official Liquidator has filed a Memo vide Diary No.4785 dated 14.09.2023 by *inter alia* observing as under:
- I. With reference to point no.5 of the OL report, Official Liquidator has reported that the Transferor Company is wholly owned subsidiary of another entity and asked the Petitioner to explain the reasons for not merging its own holding Company. Instead of clarifying the matter in fully, with a justifiable reasons, Petitioner has submitted reply with is irrelevant to the query. The Tribunal may kindly note this.
  - II. With reference to point no.9 of the OL report, as stated in the report of OL there are many unsecured creditors in the Company. The NOC has been obtained from the holding company only. The interest of other unsecured creditors are also to be taken care and the consent letter may be insisted. The Transferee Company may be given a specific undertaking to NCLT for settlement of all undisputed MSME claim and interest within in the time frame to be decided by the Tribunal, if deem fit. The Petitioner Company simply replied that it will be settled by Transferee Company in the ordinary course of business as per their convenience, which is not acceptable.

- III. With reference to point no.10 of OL report, since the Petitioner has committed to file adjudication application before the scheme is allowed, no further comments to offer.
- IV. With reference to point no.11 of OL report, there are large number of Related Party Transactions in Transferor Company. Simply stating that it was all done in arm's length and disclosed in the Financial Statement without supporting documents/showing compliance is not acceptable. The Tribunal may ask to show the compliance.
15. The Competition Commission of India (CCI) vide letter dated 28.03.2023 has *inter alia* stated that before passing an appropriate order, the NCLT may seek an undertaking from the companies involved that approval of Commission is not required for the said matter(s). In this regard the Affidavits of the Authorized Representatives of the Petitioner Companies has been filed on 30.12.2022 stating that the Petitioner Companies are not required to issue notice of Combination to Competition Commission of India due to the exemption provided under Notification No.S.O.988(E) dated March 27, 2017 issued by the Ministry of Corporate Affairs read with the Schedule I to the Competition Commission of India (procedure in regard to the transaction of business relating to combinations) Regulations, 2011, as amended from time to time.
16. Intimation of Composite Scheme of Arrangement was sent to all relevant statutory authorities/regulators. Wherever no response has been received from the said authorities/regulators, it is deemed that they have no objection to the proposed Scheme.
17. It is submitted that the Affidavits of the Authorized Representatives of the Petitioner Companies has been filed on 30.12.2022 stating that there are no investigation proceedings pending against the Petitioner Companies or its Directors under the Companies Act, 2013 & 1956.
18. It is also submitted that the Affidavits of the Authorized Representatives of the Petitioner Companies have been filed on 30.12.2022 stating that the Scheme does not provide for any kind of arrangement with the outside Creditors of Petitioner Companies and thereby Corporate Debt

Restructuring with regard to outside creditors is not applicable to the Scheme.

19. It is also submitted that the Affidavit of the Authorized Representatives of the Petitioner Company No.1 have been filed on 30.12.2022 stating that Petitioner Company No.1 is not regulated by any Sectorial Regulators to whom the Petition and Scheme needs to be intimated/filed before or after filing of the Company Petition under Section 230 of the Companies Act, 2013.
20. It is further submitted that the Affidavit of the Authorized Representatives of the Petitioner Company No.2 have been filed on 30.12.2022 stating that the Petitioner Company No.2 is regulated by Securities and Exchange Board of India (SEBI) as the shares of Applicant Company No.2 are listed with BSE Ltd. The BSE Ltd. has given their observation letter to the Scheme. Apart from the said Sectorial Regulators to whom the Petition and Scheme needs to intimated/filed before or after filing of the Company Application under Section 230 of the Companies Act, 2013 with this Tribunal.
21. Heard the learned Counsels for the parties. We have carefully perused the pleadings of the parties and entire materials on record.
22. With reference to the Memo filed on 14.09.2023 by the Official Liquidator, it is observed that the first point of the OL is regarding why the subsidiary company is not merging with the holding company. This is not a matter to be look into or questioned by this Tribunal. It is the business decision of the Petitioner Companies as to with which company they propose for merger. The second point is with regard to the dispensation of meeting of the Unsecured Creditors which was considered in the first motion order dated 10.10.2022. However, since the Consent was obtained from Unsecured Creditor who was holding a total of 94.34% in value of the Unsecured Creditors, the requirement of Section 230(9) of the Companies Act, 2013 is satisfied and, therefore, the contention of OL in this regard is not tenable legally.
23. On 15.02.2024, the following order was passed:

*“...2. On perusal of records, it is observed that this Tribunal has received a letter from the BSE dated 16.12.2022, wherein it is informed that Gokak Textiles Ltd. (Applicant Company No.2) is required to comply with Para A(3) (a) to Master Circular dated 23.11.2021 issued by SEBI and provide requisite disclosures and in view of above the BSE requested this Tribunal to direct the Applicant Company No.2 to not to proceed with the Scheme without complying with the aforesaid requirements. In this regard it is observed that the Scheme cannot be allowed without proper compliance of the Regulations as prescribed. Further, it is also observed that an affidavit has been filed by the Petitioner with this Tribunal vide Diary No. 816, dated 10/02/2023, wherein it is stated that the equity shareholders’ meeting of Applicant Company No.2 was to be held on 14.12.2022, however, the said meeting was adjourned to 26.12.2022. It is seen that along with the said Affidavit the Petitioners have enclosed a copy of the notice with reference to adjourned meeting of Equity Shareholders of Applicant Company No.2 along with Abridged Prospectus for Applicant Company No.1.*

*3. In view of the above, the matter is de-reserved today and we direct the Registry to prepare notice to BSE Ltd. seeking their comments with reference to its letter dated 16.12.2022, a copy of this letter be also enclosed to the Notice to be issued by the Registry to BSE Ltd. The Ld. Counsel for the Petitioner is directed to collect the Notice from the Registry and serve it on the BSE/SEBI through speed post as well as by e-mail and file an Affidavit of service along with tracking report, within a period of one week. The Petitioner is further directed to comply with any further requirements to the satisfaction of BSE Ltd. and furnish NOC from BSE Ltd. The BSE is directed to file its response, within a period of two weeks of receipt of the notice.*

*4. The learned Counsel for the ROC is directed to be present on the next date of hearing to explain regarding the NOC to be obtained from the BSE Ltd...”*

24. In compliance to the above order, Ld. Counsel for the Petitioner has filed a memo vide Diary No.1647 dated 13.03.2024 enclosing a letter dated 12.03.2024 issued by the BSE Ltd. wherein it is stated that the Exchange does not have any further observations.

25. Further, on 14.03.2024, the following order was passed:

*“...3 Ld. the Ld. Counsel for the ROC submitted that there are several points in the ROC’s report and the Petitioner Companies have given undertaking that they will make compliance of the same. If any further undertaking is there, Ld. Counsel for the Petitioner is directed to file an Affidavit for the same, within a period of one week....”*

26. In response to the order dated 14.03.2024, the Ld. Counsel for the Petitioner Companies has filed a memo vide diary no.1727 dated 15.03.2024 wherein it is *inter alia* stated that there are no pending undertakings to be filed and also has given a tabular form showing status of various undertakings.

27. The reports of the ROC, RD, Income Tax Department, CCI and OL are taken on record. The letter dated 12.03.2024 issued by the BSE Ltd. is also taken on record. The reply filed by the Petitioner Companies to the above mentioned reports are also taken on record.
28. In view of the aforesaid observations, we conclude that the objections/observations to the Scheme received from RD, ROC, CCI, Income Tax Dept., BSE Ltd. and OL have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
29. The Composite Scheme of Arrangement in question annexed as **Annexure-A of the Reply Affidavit to the Common Report of the RD & the ROC** filed vide diary no.4998 dated 27.09.2023 is approved and we hereby direct that the same is to be binding on all the shareholders and creditors of the Transferor Company as well as the Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copies being so delivered the Transferor Companies shall be dissolved without undertaking the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- in favour of "Pay and Accounts Officer, Chennai in respect of the



Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad” and Rs.25,000/- in favour of ‘The Prime Minister’s National Relief Fund’, within a period of four weeks from the date of receipt of certified copy of this Order; and

- (iii) That the Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time; and
- (iv) That the Petitioner Companies are directed to comply with all the undertakings given by them in their reply filed to the ROC/RD, OL & IT report; and
- (v) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary; and
- (vi) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

30. As per the directions, Form No.CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit.
31. The learned Counsel for the Petitioner Companies is directed to serve a copy of this Order to all the Statutory Authorities within ten days from the date of receipt of copy of this order.
32. **Accordingly, C.P.(CAA)No.04/BB/2023 is disposed of.** Copy of this Order be communicated to the Counsel for the Petitioner Companies.

**Sd/-**  
**(MANOJ KUMAR DUBEY)**  
**MEMBER(TECHNICAL)**

**Sd/-**  
**(K. BISWAL)**  
**MEMBER (JUDICIAL)**